

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MARY M. MITCHELL,

Plaintiff,

v.

Civil Action No. 5:06CV13
(STAMP)

JO ANNE B. BARNHART,
Commissioner of Social
Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER
ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

On February 3, 2006, the pro se plaintiff, Mary Mitchell, filed a complaint seeking judicial review, pursuant to 42 U.S.C. § 405(g) of an adverse decision by the defendant Jo Anne Barnhart, Commissioner of Social Security Administration. On that same day, the plaintiff filed a petition to proceed in forma pauperis. The case was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B).

Magistrate Judge Seibert considered the plaintiff's petition to proceed in forma pauperis and submitted a report and recommendation. In his report, the magistrate judge recommended that the application be denied.

Upon submitting this report, Magistrate Judge Seibert informed the parties that, if they objected to any portion of his proposed findings of fact and recommendation for disposition, they must file

written objections within ten days after being served with a copy of the report. To date, no objections have been filed by the parties.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a de novo review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982); Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, this Court reviews the report and recommendation of the magistrate judge for clear error.

As stated in the magistrate judge's recommendation, the plaintiff completed the form to proceed in forma pauperis but did not submit an affidavit. Pursuant to 28 U.S.C. § 1915(a)(1), a court may authorize the commencement of an action "without the prepayment of fees or security therefor, by any person who submits an affidavit . . ." The affidavit must include "a statement of all assets such person possesses and that the person is unable to pay such fees or give security therefore." 28 U.S.C. § 1915(a)(1). The plaintiff stated that she received Social Security Disability benefits in the amount of \$1,583.00 per month and has \$1,550.07 in her bank account. This information, without a proper affidavit, is

insufficient to demonstrate that the plaintiff is financially unable to pay the filing fee in her social security appeal.

Accordingly, the magistrate judge correctly recommends that plaintiff's application should be denied. This Court finds no clear error in the findings made by the magistrate judge. Thus, this Court must conclude that the report and recommendation should be adopted in its entirety.

Conclusion

Because the parties have not objected to the proposed findings of fact and recommendation for disposition, and because this Court finds that the recommendation is not clearly erroneous, this Court hereby ACCEPTS and ADOPTS the magistrate judge's report and recommendation in its entirety. For the reasons stated above, plaintiff's application to proceed in forma pauperis is hereby DENIED.

IT IS SO ORDERED.

The Clerk is directed to transmit copies of this order to the plaintiff and to counsel of record herein.

DATED: April 28, 2006

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE